UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/159,520	09/23/1998	TROY GENE ANDERSON	HW-106-CIP	5244

7590 06/10/2009

ALBERT PETER DURIGON
20 EUSTIS STREET
CAMBRIDGE, MA 021402387

EXAMINER	
FAULK, DEVONA E	
ART UNIT	PAPER NUMBER
2614	

MAIL DATE	DELIVERY MODE
06/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/159,520	ANDERSON ET AL.	
	Examiner	Art Unit	
	DEVONA E. FAULK	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *9/23/08* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/6/05 have been fully considered but they are not persuasive.

2. In response to applicant's essential argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Davis teaches of the Beta (alert), Alpha (relaxed), Theta (drowsy) and Delta (sleep) brainwave states. These are well known in the art. Davis teaches of relaxing an individual. The examiner asserts that when an individual is relaxed, they can rest or sleep. Therefore it would have been obvious to one of ordinary skill to use the teachings of Davis to induce sleep by playing sounds and decreasing their playback rate over time.

3. The applicant filed an RCE and petition to revive the case after abandonment, however the RCE was not proper since prosecution was not closed on the case.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Admitted Prior Art (AAPA) in view of Davis (US Patent 5,352,181).

6. Regarding claims 1-5, AAPA discloses several digital sound relaxation devices including the Marsona 1250, Tranquil Moments TM-500 Sound Relaxation System, and the Digital Sound Soother XS which disclose a housing, at least one speaker, a digital memory for storing samples of sounds to be replayed continuously, at least one selector switch to select the sound to be replayed and a sound controller (page 1, line 10-page 4, line 8). The prior devices do not disclose a sleep induce mode wherein the sound to be replayed is played repetitively for a first time interval and at a second time interval which consists of a certain number of third time intervals, the replay rate decreasing for each successive third time interval. Such a technique was well known in the art for promoting relaxation and inducing sleep. Davis discloses a method for achieving Alpha and Theta brainwave states, which were commonly known in the art to bring about relaxation. As taught in the abstract and column 2 lines 50-55, musical composition is recorded for playback which has an initial tempo which is decreased to a final tempo. Also taught in column 3 lines 20-26, an user's brainwave cycles will try to synchronize with the tempo of the music. Therefore, it was taught that music could be played at a certain tempo and decreased in that tempo for the purpose of inducing a brainwave state. Davis teaches of the Beta (alert), Alpha (relaxed), Theta (drowsy) and Delta (sleep) brainwave states (column 3, lines 1-10). These brainwave states are well

known in the art. Davis teaches of relaxing an individual. The examiner asserts that when an individual is relaxed that they can rest or sleep. Therefore it would have been obvious to one of ordinary skill to use the teachings of Davis to induce sleep by playing sounds and decreasing their playback rate over time. It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Davis in any of the devices of the prior art since it would have enhanced the relaxation properties of them. As taught in column 4 lines 20-26 of Davis, the tempo is decreased at 2 beats/minute, however, it was well within the scope of the teachings to use any decrement value, thereby making the claimed time intervals obvious design choices. Claims 1 and 8 are met. Per claim 2, as explained above, the method of inducing deep relaxation is taught by Davis. As to claims 3-5, the prior art devices already were configured for a sound soothing function and modifying them per the teachings of Davis to have a further sound relaxation mode would have required a switch to select between the sound soothing function and the relaxation mode.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA in view of Hatta et al, US Patent 4,589,779.

Regarding claim 6, as discussed above, the prior art devices disclose a digital sound relaxation machine having a housing, speaker, selector switch, memory having a library of selectable sounds and a sound controller. The sound controller retrieves a selected sound for replay and replay it continually. However, the prior art devices do not

incorporate an alarm set mode, an alarm check mode and an alarm mode. Nonetheless, alarm modes whereby a specific alarm can be sounded at a specific time were well known in the art. Hatta et al teach that conventional alarm clocks were designed so that a stored message could be selected from a plurality of messages and be outputted at a certain time. Thus, it was taught to have a library of sounds that can be replayed as a wake-up sound, as claimed by Applicant. It would have been obvious to one of ordinary skill in the art at the time of invention to include an alarm mode in the prior art devices since those devices are related to sleep induction and relaxation and an user would have benefited from having an alarm feature in the same device as that which provides a sleep effect. Examiner makes official notice that alarm clock devices have alarm check modes that display if and when an alarm is set. Modifying the prior art devices would also include displaying which selected sound for the alarm. Per claim 7, it would have been obvious to use two volume control switches for the two modes (continual replay mode, alarm mode) since a waking volume would have to be higher than a sleep inducing volume.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVONA E. FAULK whose telephone number is (571)272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devona E. Faulk/

Primary Examiner, Art Unit 2614